

FAIR START MOVEMENT'S DRAFT PROCESS FOR THE UNITED NATIONS HUMAN RIGHTS COUNCIL REGARDING VIOLATIONS OF ARTICLE 16 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Article 16 states: "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution." Accordingly, "[t]he right to found a family implies, in principle, the possibility to procreate and live together."¹

1. The UN was obligated, since the inception of the Declaration, to interpret and implement the right in ways that protected past, present and future generations equally, as well as consistent with other human rights obligations. Allowing unsustainable family planning to create short term economic growth, in ways that would limit future generations' right to found a family consistent with under obligations like the CRC, would have been strictly prohibited.
2. Currently, [many young persons are forgoing their right to found a family in a socially and ecologically sustainable way](#),² and [consistent with the Children's Rights Convention](#). Why? Because of population growth-driven crises like climate change created by prior generations.

A recent study has confirmed that higher temperatures associated with the climate crisis are likely to cause [a significant increase in congenital birth defects in children](#). A second study has confirmed that having fewer children has [an exponentially greater mitigating impact](#) on the climate crisis than alternative behavior changes, like switching to an electric car. A third, an in-depth article, found that despite the first two studies, [political, media, and cultural pronatalism – or pressure on women to have kids – was on the rise](#): Despite the harm, we tolerate men pushing women to have lots of kids and the unsustainable population growth it causes. Indeed, U.S. tax policy [appears to have recently pivoted in this direction](#). All of this occurs, and is enabled, under the UN's current reading of Article 16

3. Young persons' rights to found a family do not appear to have been protected, but instead subverted to past unsustainable economic growth models.

The UN was first [advised of this problem several years ago](#), and in [leading academic work as early as 2007](#). Instead of ensuring a norm that [would incentivize SDG-compliant](#)

¹ U.N. Human Rights Committee, General Comment No. 19, art. 23 (Thirty-ninth session 1990) in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, at 107, U.N. Doc. HR1/GEN/1/REV. 4 (2000)

² See also

<https://thehill.com/changing-america/sustainability/climate-change/572140-poll-finds-huge-percentage-fear-having>

[family planning and the CRC or higher \(moving towards equity\) children deserve](#), wealth went to the top of the economic ladder.

Relatively impoverished or otherwise oppressed women do not enjoy autonomy because for decades the UN has interpreted Article 16 in a hands off way that abandoned women to their oppressors, and to pronatalism. This was done in ways that evaded giving generations of women a fair start in life, and the fostering of inclusive/participatory democracies, and instead opted for patriarchal growth on the back of those women. Had the UN read Article 16 more narrowly to protect future generations' right to found a family, and fair starts in life for all, women would have been more empowered by now. Instead, autonomy, unleashed in a world of vast power differentials, seems to have merely licensed exploitation. Had the UN bifurcated the right to have children from the right to not have children, treated the latter as based on autonomy [but the former as based on child-centric Fair Start](#), women would have been protected. That move would have ensured women would meet CRC or much higher standards, from the first child on. Of course, that would have necessitated wealth transfers, and instead that money went to help ensure the wealth gap we see today.

4. Indeed, prior UN interpretations of Article 16 seems to have conveniently evaded states' collective obligations to distribute wealth (from those concentrations of wealth who influence policies the most) in ways that would have furthered autonomy for all by funding better family planning that would have balanced women's, children's, and our collective autonomy from things like the climate crisis and Covid-19. In fact, under the correct reading of Article 16 discussed below, transfers of wealth under those obligations would have been mandatory.
5. Prior generations could have misread their human rights obligations – and failed future generations' right to found any family by enabling unsustainable family planning in the past - in order to maintain an patriarchal, inequitable and unsustainable system of economic growth, or what [one Nobel laureate referred to as Ponzi scheme](#). If the United Nations were complicit, it would have been subverting human rights and democracy at the most fundamental level. The shopping malls of an economy must be regulated by the town halls of a democracy. Unless we reject the past 400 years of political evolution, this is not debatable. But there's a tension here. The former push in the opposite existential direction relative to the latter, urging lots of people with lower levels of cooperativeness, development, and no baseline for equity amongst themselves. Democracy, on the other hand, necessitates smaller populations where participation is not diluted by explosive population growth to nothingness, and where persons are inclined to cooperate with one another, in part because of their level of development and the assurance of an equitable baseline that gives them "equal opportunities in life." To promote the economic gearing for the creation of persons is thus to subvert human rights and democracy at the most fundamental level – an existential one.³

³ See <https://fairstartmovement.org/reframing-population-and-family-planning-to-focus-on-justice/>

6. Such a reading would have constituted a violation of Article 16 of the UDHR and relevant provisions of the International Bill of Human Rights, and the [weight of expert opinions on its best interpretations](#), all of which respect intergenerational equity in the practice of Article 16.⁴ Article 16 is unique, and especially in its relation to Articles 1 and 21 of the UDHR and relevant provisions of the International bill of rights, which guarantee the right of self-determination and to governance derived from the people. This relation gives a correct and ecosocially sustainable interpretation of Article 16 a uniquely fundamental and peremptory role. The authority of government derives from people, who derive from their creation and development. Hence, a fair and just creation norm is supreme, and the first and overriding human right, dominant over the state-created property rights that protect concentrations of wealth and prevent fair starts in life.
7. What would have evaded this generationally inequitable reading of Art. 16? Child-centric Fair Star family planning is designed to create a foundation of equity that can be applied in perpetuity.⁵ It accounts for the interests of the majority of persons – those that will live in the future. Political legitimacy derives from people, and people derive from their creation. Thus a just creation norm is the first and overriding human right, or grundnorm, overriding all competing obligations, including property rights.⁶

The costs of the UN's self-serving misinterpretation are astronomical, and constitute the [greatest single and multi-faceted driver of the climate crisis, turmoil in the development of emergency population measures](#), creating [the background conditions that ensured the transmission and disastrous impact of Covid-19](#), and ensuring [chaos in climate related migration](#).

The climate crisis, the threat of pandemics, and rising inequity all represent a sea change in circumstances relative to those past periods of time in which Article 16 was interpreted without regard to how population growth and its consequences would impact the right of future generations to found families. The prior interpretations, and applications, have been inherently inequitable and unsustainable, 1) creating benefits for past generations while imposing costs on future generations, 2) ensuring volatility in future population projections that range in the billions of people, and 3) proving inherently undemocratic and contrary to the rule of law because they ignored the interests of the majority of persons – those that will exist in the future.

The Secretary General is authorized to make informal statements that can begin the process of revisiting interpretations and applications of Article 16, [in light of changed circumstances](#). More specifically, the Secretary General can recognize 1) the central role of birth equity, both between existing socioeconomic classes and intergenerationally, and 2) the efficacy of substantial family planning incentives/entitlements structured around birth equity, which can significantly lessen the gap between rich and poor and offset the harm past and current generations are imposing on

⁴ See also <https://global.oup.com/academic/product/one-child-9780190203436?cc=us&lang=en&>

⁵ See <https://bolognalawreview.unibo.it/article/view/13299>

⁶ Id.

future ones, and 3) expedite population stabilization within an optimal range.⁷ Such a statement could be highly influential in critical and volatile policy contexts, like the current struggles in India and China for a sustainable population policy.⁸

As such, irrespective of United Nations action, young people are beginning to exercise the correct interpretation and peremptory nature of the right to demand the substantial family planning incentives/entitlements, structured around birth equity, discussed above.⁹

They have the right to take reparatory resources, from the top down, and we will help them do so by securing resources and incentives/entitlements to satisfy the rights and obligations of Article 16, including ensuring future children's enjoyment of their rights under the Children's Rights Convention.¹⁰

We will start by engaging the relatively wealthy children of UN officials [in this special form of constitutional dialogue](#), and social change geared around our just desert to family planning incentives/entitlements. There is nothing more just than targeting an extant minority for the benefit of the countless future majority.

This process will build, targeting the concentrations of wealth and power – both public and private - most responsible for the climate and other crises we face today, including those that most benefited from past, inequitable and unsustainable interpretations of Article 16. The future majority must be protected against the extant minority.

The United Nations has been criticized for failing to intervene to protect human rights in other contexts. Given the climate and other ecological crises, failure here could result in worse consequences, and for many more people.

⁷ See <https://www.weforum.org/agenda/2019/09/christopher-tucker-planet-of-3-billion-book-extract-climate-change/>.

⁸ See <https://www.scmp.com/week-asia/politics/article/3114852/population-control-india-eyeing-chinas-one-child-policy-some-see>

⁹ <https://fairstartmovement.org/a-true-independence-day-watch-fair-start-in-action/>

¹⁰ See <https://fairstartmovement.org/calling-for-voices-think-your-future-child-deserves-a-fair-start/>; also see <http://blogs.luc.edu/lawjournal/2020/04/how-subsidizing-delayed-parenthood-will-let-children-lead-the-way-to-a-fairer-world/>.